

Honorable Senator Brian Burke
Senate Chair
Joint Committee on Finance
316 South, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707

Honorable Representative John Gard
Assembly Chair
Joint Committee on Finance
315 North, State Capital
P.O. Box 8952
Madison, Wisconsin 53708

Date: April 20, 2001

RE: The Brownfields Study Group's Comments on the State's Biennial Budget

Dear Senator Burke and Representative Gard:

The Brownfields Study Group is pleased to provide you with comments on the State's 2001-2003 Biennial Budget. As requested, the Brownfields Study Group has met and reviewed the brownfields recommendations in the governor's proposed budget. Please find attached to this letter the recommendations of the majority members of the Brownfields Study Group. We would like to note that these recommendations reflect the opinions of the non-state agency members of the Study Group. The state agencies' roles at this point in the budget process have been to respond to technical and policy questions posed by the other members of the group.

The recommendations outlined in the attachment is the result of a meeting held on March 16, 2001. The Brownfields Study Group met and compared the proposed budget with the recommendations contained in the 2000 Brownfields Study Group Final Report. The Study Group has identified for you the issues the majority of its members believe should be further addressed by the State, but were not included as part of the proposed state budget.

As always, we look forward to working with you, the Legislature and the governor to improve Wisconsin's nationally prominent and innovative brownfields initiative. If you have any questions or would like additional information on any of the recommendations described in this letter, please feel free to contact any of the members.

Sincerely,

The Wisconsin Brownfields Study Group

Attachment

Cc:

Governor Scott McCallum
Representative Neal J. Kedzie

Senator James R. Baumgart
Brownfields Study Group Members

ATTACHMENT

A. Brownfields Liability Protections

Expand Local Government Cause of Action

The 1998 Brownfields Study Group recommended that a cause of action for local governments be created to allow local governments to recover cleanup costs from responsible parties. This cause of action was included in the 1990-2001 Biennial budget (s. 292.33, Stats.).

The 2000 Brownfields Study Group examined the cause of action provision and identified some methods to expand its effectiveness as a tool to help finance brownfields cleanup. In the *2000 Brownfields Study Group Final Report*, members specifically recommended that the law be changed to allow local governments to assign their rights of cost recovery to a new property owner. The Group felt that this would lead to more privately financed cleanups if this tool was available.

- A majority of the Study Group members recommend that this item be added to the 2001-03 Biennial Budget. The Study Group considers this recommendation a high priority.

B. Brownfields Incentives for Local Governments

1. Modify Expenditure Restraint Exemption for Municipalities

Municipal representatives of the Study Group have noted that both the state and local budgets are very limited. Local governments need to balance the money they expend on services they are required to provide, in contrast to the ones that they would like to provide. Certainly, cleaning up a tax delinquent, contaminated property is an activity a community can elect to take, but need not according to state law. The expenditure restraint authority may function as a disincentive for communities to voluntarily cleanup, given the expenditure restraints.

Given the emphasis placed on brownfields redevelopment in the recent Smart Growth legislation, municipalities require flexible financial tools to support their planning and implementation initiatives. More brownfields properties can be put back into productive use much sooner through inclusion of this statutory amendment. It was noted that if brownfields are to be redeveloped, either the state needs to provide the funds to make it happen, or local governments should be given more flexibility to spend their own funds on what they believe are community priorities. Proposed language for the amendment is included on page 33 of the Study Group Report.

- Study Group members recommend that a statutory amendment be prepared to exclude property taxes and special assessments reimbursed by a municipality,

to acquire tax delinquent brownfields properties, from counting against spending cap limits for those municipalities. The Study Group considers this issue a high priority, but the proposal did not have unanimous consensus.

2. Clarify Blight Elimination and Slum Clearance Authority

In the Study Group's 2000 report, it recommended two clarifications to Wisconsin's Blight Area Law and the Blight Elimination and Slum Clearance Act. First, it requested a clarification to include "environmental pollution" in the definition of blighted area and blighted property. Many communities are already using these authorities at contaminated properties. Second, the municipality or redevelopment authority should have the right to make environmental inspections of such properties.

The Study Group has debated this recommendation throughout the course of its tenure. The debate has centered on the definition of environmental pollution, and the fact that some of the group felt that the definition is too broad and provides too much authority to local governments. Others counter that this recommendation is solely a "clarification" of an existing, accepted practice by local governments.

- Due to this historic discourse, the Study Group recommends that individual members are to deal with issue through the regular legislative process, rather than as part of the Study Group's recommendations.

3. Modify DNR Guidelines Related to Wisconsin's Privacy Act (Act 88)

At the time of publishing, the Study Group Report recommended a statutory fix to the perceived loss of key database information concerning the names and locations of contaminated properties throughout Wisconsin. Preservation of this data is considered crucial for planning and environmental remediation purposes.

Subsequently, progress has occurred through cooperation between the State Legislature and the DNR. State agencies and relevant legislators have clarified that the intended applicability of Act 88 is related to license data lists (e.g. ALIS and BATS), rather than intended to limit the public's access to environmental data (e.g. BRRTS and others). As a result, the data the Study Group was trying to maintain – such as site names and addresses – will still be available to the public through the DNR's web site and database systems. Guidance to DNR staff has been prepared and provided by Secretary Bazzell as to how the environmental data will be handled. The DNR continues to work with the Legislature to develop an accompanying statutory clarification to ensure the long-term availability of this data for the public's use.

- The BFSG recommends appropriate legislative modifications be made, which clarify the short-term administrative solutions currently being implemented. Any legislation should ensure that the name of site and street address should be made available to the public, and not considered personally identifiable information under Act 88. Study Group members consider this recommendation a high priority.

C. Financial Incentives for Brownfields

1. Strengthen and Stabilize Environmental Revenues

More than \$15.2 million is deposited in the Environmental Fund annually from several revenue sources. The vehicle impact fee supplies 45 percent of the fund and is scheduled to sunset on June 30, 2001. The Environmental Fund is the revenue source for many state brownfield programs, including the Department of Commerce's Brownfields Grant program and the DNR's Brownfields Site Assessment Grant program.

Additionally, DNR has 12 positions funded through program revenue. This revenue is generated by a fee charged for certain types of technical and liability assistance provided at cleanups. It is estimated that revenues will be insufficient to fund current staffing levels, with a deficit estimated in FY 2002.

The Executive Budget proposes to extend the sunset on the vehicle impact fee until September 30, 2003. However, Study Group members feel a permanent source of funding is needed for the Commerce Brownfields Grant, the DNR Brownfields Site Assessment Grant, and DNR staff.

- The Study Group recommends creating a permanent source of funding to support this State's brownfields efforts. Study Group members consider this recommendation a high priority.

2. Expand the Brownfields Grant Program

The demand for the Department of Commerce's brownfields grants continues to exceed the available funds. During the past four rounds of competition, more than \$76 million has been requested out of an available \$15.8 million. As a result, only 39 of the 106 applicants have received financial support for their projects. The projects that received awards resulted in the restoration of 500 acres of land and the potential creation of 3,000 jobs.

Based on this information, Study Group members additionally recommend:

- Funding for this program should be increased from \$12 million (proposed) to at least \$13 million, to help meet the demand for this program. Members consider this a high priority.
- The Study Group determined that if Commerce demonstrates the need for another staff person, the Study Group would support the submission of a s. 13.10 request to the Joint Finance Committee. No priority level was assigned for this issue.

In addition, the following statutory modifications were recommended to improve the efficiency of the current grant program:

- The Brownfields Study Group recommends a statutory change that requires the Brownfields Grant to have a semiannual grant cycle. Holding competitions twice annually would: (1) allow applicants to prepare more complete applications; and (2) be more responsive to the public's needs. Members consider this recommendation a high priority.
- Presently, the Department of Commerce must award seven grants for projects located in a municipality with a population of less than 30,000. The Study Group recommends that the requirement be changed to say that Commerce must award an "equitable distribution" of grant projects. Study Group members consider this recommendation a medium priority.

The following two proposals from the Executive Budget were not original recommendations of the Study Group, but the group would like to express their support on these items, though no priority level has been assigned.

- The Group agrees that the grant funds should not be used to pay liens and back taxes at the property. However, the group would like to receive written clarification from Commerce that these costs are eligible as "matching funds" for the Brownfields Grant Program.
- The Group supports the elimination of the three funding categories: under \$300,000; between \$300,000 and 700,000; and greater than \$700,000.

3. Modify Environmental Remediation Tax Incremental Financing (ER TIF)

The ER TIF, created in the 1997-1999 state budget, allows political subdivisions to be reimbursed for specific environmental costs, from the increased property taxes generated from the redeveloped property.

The Study Group recommends several statutory changes to make the ER TIF more usable and more similar to a regular TIF:

- Include delinquent taxes as an eligible cost. The Study Group considers this recommendation a medium priority.
- Extend the ER TIF time period from 16 to 23 years. The Study Group considers this recommendation a high priority.
- The Study Group generally supports the technical changes proposed by the Department of Revenue which were included in the Executive Budget proposal. The Study Group considers this recommendation a high priority.

4. Modify the Brownfields Site Assessment Grant (SAG) program

The Brownfields Site Assessment Grant (SAG) program was created in the 1999-2001 State Biennial Budget (s. 292.75, Wis. Stats.), with \$1.45 million in funding in response to one of the recommendations of the 1999 Brownfields Study Group Report to the Legislature.

Within 13 months of the approval of the state budget, DNR used its emergency rule authority and awarded all the available \$1.45 million in SAG funding to 49 sites in 35 different communities. As an indication of its popularity, the SAG program received a total of \$3.82 million in requests. When all the available funds were used, there were 58 projects without funding, 76 percent of those sites in communities with a population less than 30,000. In addition, many communities used SAG funds to conduct initial activities to make their projects eligible for a Commerce brownfields grant.

The Brownfields Study Group recommends the following statutory changes to the proposed budget as high priorities:

- “Overwhelming consensus” to continue the administration of the SAG at DNR. Members of the Study Group expressed support for the SAG program and satisfaction with its implementation at the Department of Natural Resources. The Study Group does not support the proposed transfer of the SAG to another state agency. One member noted that the site investigation activities using SAG funds frequently required working with DNR’s technical staff on environmental contamination issues.
- Increase funding for the Brownfields Site Assessment Grant (SAG) program from \$1 million (proposed) to at least \$2 million. Members felt the need for preliminary activities at brownfields sites has demonstrated the need for continued stable funding sources.
- Accept applications for grant funding twice a year. Members felt the acceptance of applications twice a year would allow more flexibility for the municipal budget cycle.

Study Group members consider the following recommendations medium priorities:

- Modify the eligible activities to clarify that asbestos abatement must be part of demolition activities.
- Expand the eligible activities to include area-wide groundwater investigations. The investigation of area-wide groundwater contamination is a cost-effective approach to determine the extent and degree of contamination for groundwater plumes that cover large areas and multiple owners.
- Expand the definition of eligible site to allow a single grant application for multiple contiguous properties regardless of individual parcel ownership.

The Brownfields Study Group expressed support for the following recommendation, though no priority level has been assigned.

- Provide adequate staff to DNR to administer the SAG program.

5. Modify the Development Zone Tax Credits

The Community Development Zone and the Enterprise Development Zone both offer tax credits for job creation and environmental remediation. Brownfields are often found within these zones, and the environmental remediation tax credit can offer an incentive for remediation and redevelopment.

The Study Group recommends these statutory changes to make this incentive more useful:

- Allow the tax credits to be transferable, between parent/subsidiary or to successive property owners.
- Clarify that the tax credits be applicable to the owner's State of Wisconsin income, and not just to income generated on the site.

The Study Group considers both these recommendations lower priorities.

6. Streamline the Land Recycling Loan Program (LRLP)

The Land Recycling Loan Program was established as a \$20 million loan fund in the 1997-1999 budget. The loans are available to local governments to investigate and cleanup brownfield and landfill sites. To date, only one loan has been awarded, and the Study Group makes the following recommendations to make this program more usable to communities.

The Study Group recommends that these changes be required administratively or statutorily, and respectfully requests that the DNR Secretary direct that these recommendations are incorporated into the program.

- Eliminate the use of the Intent to Apply (ITA) form and the December 31 deadline associated with the ITA.
- Establish at least a semiannual application process.
- Clarify that with the semiannual application process, the 40 percent of the funds that can be used for landfills is calculated on a fiscal year basis.
- Replenish the LRLP to \$20 million at the end of every even-numbered calendar year.

- Allow other credit quality collateral that will meet typical financial underwriting criteria to provide adequate security for the LRL, as opposed to currently only allowing General Obligation Bonds.
- Clarify that demolition is an eligible activity, when a necessary part of remediation.
- Make the loan available up front for Phase I and II environmental site assessments and site investigations, as allowed by the U.S. EPA. Where a local government can demonstrate that a remediation is necessary (i.e., capitol improvement), the DNR should allow these initial costs to be funded up front.

The Study Group considers all these recommendations high priorities.

7. Expand funding opportunities for the cleanup of brownfields.

Many members of the Brownfields Study Group continue to be concerned about the lack of public funds available to conduct cleanups. In particular, the group identified two areas where it generally believes more funds are needed. The first is where a brownfields is being cleaned up to create public green spaces and recreational areas. The second group of properties is where the public sector will develop the property or where the community believes that the property is a reuse priority, but the community is not able to compete for the small amount of funds currently available for brownfields cleanups that have clear economic impacts. Many states, such as Michigan, Ohio, New York, and New Jersey have significant amounts of funds available to finance the cleanup of all types of brownfield properties.

The governor's budget contains a new funding source for brownfields cleanups, the Gaming Economic Diversification Grants. The Study Group questioned the usefulness of this program for brownfields, given the lack of available information on the program and the limitations and criteria for awarding the funds. The Study Group understands that this is another program to fund cleanup where economic factors will play a major role in awarding the grants. In addition, brownfields projects will be competing against a number of other types of non-brownfields projects for this money.

- The Study Group understands that there are fiscal challenges throughout state government. However, a majority of the members believe that there is a recognized need for additional environmental cleanup funds that are not contingent on economic development criteria. While this is not the Group's highest priority, it is a priority the majority of the Study Group feels needs to be addressed by the state to ensure we maintain an effective brownfields initiative.

D. Additional Issues

The following proposal was not an original recommendation of the Study Group, but members would like to express their support for this item, though no priority level has been assigned.

The Study Group recommends the following statutory language change:

- Real Estate Condition Report – s.709.03, line C.8, Wis. Stats. I am aware of underground or aboveground fuel storage tanks on or previously located on the property. (If “yes”, the owner, by law, may have to register the tanks with the department of commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether the tanks are in use or not. ~~Regulations of~~ Administrative rules adopted by the department of commerce and department of natural resources may require closure or removal of unused tanks and the investigation and remediation of contamination from a fuel storage tank.)